

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Delvin L. Shaw,

Plaintiff,

vs.

Sgt. John Dailey,

Defendant.

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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Case No. 1:22-cv-214

The Plaintiff, an inmate at the North Dakota State Penitentiary, initiated this *pro se* action and in forma pauperis on January 5, 2023. See Doc. Nos. 2 and 6. The complaint was filed on January 19, 2023. See Doc. No. 8. After screening the complaint as required by 28 U.S.C. § 1915A, Magistrate Judge Clare R. Hochhalter issued a Report and Recommendation on March 13, 2023, in which he recommended the claim be dismissed. See Doc. No. 11. The Plaintiff was given until March 27, 2023, to file an objection to the Report and Recommendation. On March 22, 2023, the Plaintiff filed an objection. See Doc. No. 12.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, the Plaintiff's objection, and the entire record, and finds the Report and Recommendation to be persuasive. The Court finds the Plaintiff's objection unpersuasive.

The Court **ADOPTS** the Report and Recommendation (Doc. No. 11) in its entirety and **ORDERS** as follows:

- 1) The Plaintiff's complaint (Doc. No. 8) is **DISMISSED** without prejudice on the grounds that it is frivolous or otherwise fails to state a claim.
- 2) The Court assess Shaw a strike for PLRA purposes under 28 U.S.C. § 1915A.
- 3) The Plaintiff's motion to reassign case (Doc. No. 13) is **DENIED**.

- 4) The Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis.

IT IS SO ORDERED.

Dated this 11th day of April, 2023.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court